It, therefore, cannot be said that the jury had been properly directed in this case. Had the jury been properly directed on this point it is quite impossible to say with certainty that the appellants would have been convicted. In the circumstances we have no option but to quash these convictions.

Convictions quashed.

Solicitors: *David Marshall.*

GOH MUI TECK v. SEE ENG KIAT

[F.C. (Wee Chong Jin C.J., Tan Ah Tah F.J. and Buttrose J.) January 25, 1967]

[Singapore — Federal Court Civil Appeal No. Y37 of 1966]

Practice and Procedure — Action — Settlement by solicitors before trial — Whether binding on clients — Conflicting evidence of solicitors.

The issue for determination on this appeal was whether the claim in respect of which this action was brought had been settled between the parties before trial. The proceedings arose out of a road traffic accident. The first plaintiff claimed damages for personal injuries while the second plaintiff (appellant herein) as administrator of the estate of one *G*, claimed damages for the benefit of *G's* estate and his dependents. The respondent admitted liability, but alleged that he had agreed to pay and the appellant had agreed to accept the sum of $5,200 plus costs to be taxed in full and final settlement of the claim. By reason of this agreement the respondent maintained that the appellant was barred from proceeding with the action. There was a sharp conflict of evidence between the solicitors, but on the evidence the learned trial judge found as a fact that there was an agreement whereby the appellant through his former solicitor agreed to accept the amount stated and gave judgment accordingly. On appeal,

Held: (1) on the evidence the appellant's former solicitor had a general authority to and did settle the claim for a reasonable figure;

(2) as there was no misapprehension or mistake as to the terms of the settlement the appellant was bound by the compromise, *Hickman* v. *Berens* (1) distinguished.

Case referred to:—

(1) *Hickman* v. *Berens* [1895] 2 Ch. 638.

FEDERAL COURT.

Harbans Singh Sidhu for the appellant.

S. K. Chan for the respondent.

Buttrose J. (delivering oral judgment): The short issue for determination on this appeal is whether this action had been settled between the parties before the trial.

The proceedings arose out of a collision between a motor cycle ridden by the 1st plaintiff Lim Leng Kay and a motor car driven by the defendant. Accompanying Lim Leng Kay on his motor cycle was a pillion passenger one Goh Ah Yong. As a result of the accident the 1st plaintiff received minor abrasions and bruises but Goh Ah Yong was killed.

The 1st plaintiff claimed damages for personal injuries while the 2nd plaintiff — the present appellant — as administrator of the estate of Goh Ah Yong, deceased, claimed damages for the benefit of the estate of the deceased and on behalf of his dependants. The claim of the 1st plaintiff was settled by a payment of $200 and he thereupon discontinued his action against the defendant.

The defendant in his defence to the 2nd plaintiff's claim admitted that the 2nd plaintiff was bound to succeed against the defendant and, while not admitting negligence, the defendant admitted the right of the 2nd plaintiff to such damages as he was able to prove and did not require him to call any evidence of negligence by the defendant. The defendant however further alleged that he had agreed to pay and the 2nd plaintiff had agreed to accept the sum of $5,200 plus costs to be taxed in full and final settlement of his claim. By reason of this agreement the defendant maintained that the 2nd plaintiff was barred from proceeding with his action.

Now the evidence disclosed that the alleged agreement to settle the 2nd plaintiff's claim was made between the then solicitors representing the parties, namely Mr. Edwin D'Souza for the 2nd plaintiff and Mr. Goh Joon Seng for the defendant. There was unfortunately a sharp conflict of evidence between these two solicitors.

The learned trial judge found as a fact that there was an agreement whereby the 2nd plaintiff through his former solicitor, Mr. Edwin D'Souza, agreed to accept $5,200 plus costs to be taxed in a sum not exceeding $500 in full and final settlement of the 2nd plaintiff's claim and gave judgment accordingly. It is from that judgment that the 2nd plaintiff now appeals.

As I understand the argument the 2nd plaintiff does not quarrel with the learned trial judge's findings of fact. All I desire to say on this aspect of the case is that after carefully considering the evidence I do not see how the trial judge could possibly have arrived at any other conclusion than the one which he did.

The main point which has been argued before us is that where counsel consents to a compromise under a misapprehension, such as where, intending to concede one thing, he inadvertently concedes another, or where the counsel on both sides are not *ad idem*, neither the counsel nor the client is bound by the compromise and the court will set it aside. For that proposition counsel relies on a case of *Hickman* v. *Berens*.(1) In my view the case of *Hickman* v. *Berens* has no application whatever to the facts of this case. This was not a case of counsel consenting to a compromise under a misapprehension or mistake or where both sides are not *ad idem* as to the terms of the compromise. This is a case of one solicitor saying there is a settlement and of

another solicitor denying the settlement. Unlike the case of *Hickman* v. *Berens*, this issue was tried before a judge and the two solicitors gave their conflicting versions on oath. Mr. Goh maintained there was a settlement. Mr. Edwin D'Souza, on the other hand, saying there was no settlement at all. After hearing the evidence, the learned trial judge came to the conclusion that the case had been settled.

It was further argued on behalf of the appellant that the 2nd plaintiff's solicitor, Mr. Edwin D'Souza, had no authority to settle the claim on behalf of his client at this sum of $5,200. This is not a point that was raised in the memorandum of appeal but in my view it has no substance. On the evidence it was clear that Mr. Edwin D'Souza had a general authority to settle for a reasonable figure. Counsel for the appellant has referred us to what he calls a number of contradictions in the 2nd plaintiff's evidence. These were all matters entirely for the discretion of the learned trial judge, a discretion which I see no reason whatever for disturbing. A further point raised was that there was a wrongful admission of a without prejudice letter but this, in my view, is without substance. For these reasons, therefore, in my judgment this appeal must be dismissed with costs. Deposit to respondent.

Wee Chong Jin C.J. and **Tan Ah Tah F.J.** concurred.

Appeal dismissed.

Solicitors: *Harbans Singh & Kamil; Braddell Bros.*

CHONG FOOK KAM & ANOR. v. SHAABAN BIN HUSSIEN & ORS.

[O.C.J. (Raja Azlan Shah J.) February 28, 1967]

[Raub — Civil Suit No. 35 of 1965]

Tort — Wrongful arrest — Damages for — Criminal Procedure Code (Cap. 6), s. 23(i)(a) — "Reasonable complaint" — Extent of power of police officer to arrest without warrant.

Criminal Law and Procedure — Illegal detention — Criminal Procedure Code (Cap. 6), s. 28 — Whether 24 hours period excludes time taken for journey.

On July 10, 1965, the defendants. police officers, received a complaint of a fatal hit-and-run road accident. Sawn timber had fallen from a lorry with a red bonnet and a trailer, and smashed the screen of a car following it, causing the death of a passenger, and injuries to three others. Road blocks were put up, and a lorry answering the description was found. The plaintiffs, its driver and attendant were apprehended at 7.55 a.m. and interrogated. Thereafter they were brought before a magistrate at 8.30 a.m. the following day, and were detained. As there was insufficient evidence to establish a case against them, the plaintiffs were released on July 13. In a claim for damages for wrongful arrest the plaintiffs alleged that they had been wrongfully arrested and illegally detained for more than 24 hours before they were brought before a magistrate.

Held: (1) under section 23(i)(a) of the Criminal Procedure Code, there must be a reasonable complaint before a police officer can arrest a person suspected of having committed a seizable offence without a warrant. Reasonable complaint requires an objective test — that is, a state of affairs which would lead a man of ordinary care and prudence to believe or entertain an honest and strong suspicion that the suspect is guilty of a seizable offence;

(2) the defendants were not guilty of wrongful arrest as there were facts within the cognisance of the defendants founded upon some tangible legal evidence which in the circumstances constituted reasonable complaint or suspicion;

(3) although the plaintiffs were arrested at 7.55 a.m. on July 11, and were brought before the magistrate at 8.30 a.m. on July 12, the allegation that they had been illegally detained for more than 24 hours could not stand. Section 28 of the Criminal Procedure Code expressly excludes from the 24 hour period, the necessary time taken for the journey in bringing the suspect before a magistrate. The journey from the place of arrest to the magistrate's court took more than an hour. It is therefore fair to say that in the circumstances the plaintiffs were in lawful custody well within 24 hours.

Cases referred to:—

(1) *Christie* v. *Leachinsky* [1947] A.C. 573.

(2) *Re Charn Chandra Majumdar*, A.I.R. 1917 Cal. 25.

(3) *Sabodh Chandra* v. *Emperor*, A.I.R. 1925 Cal. 278.

(4) *Tan Kay Teck & Anor.* v. *Attorney-General* [1957] M.L.J. 237.

(5) *John Lewis & Co. Ltd.* v. *Tims* [1952] 1 All E.R. 1203.

(6) *Dallison* v. *Caffery* [1964] 2 All E.R. 610.

(7) *Herniman* v. *Smith* [1938] 1 All E.R. 1; [1938] A.C. 305.

(8) *State of Hyderabad* v. *Kankadu*, A.I.R. 1954 Hyd. 89.

CIVIL SUIT.

D. R. Seenivasagam and *D. P. Xavier* for the plaintiffs.

Au Ah Wah (Senior Federal Counsel) for the defendants.

Cur. Adv. Vult.

Raja Azlan Shah J.: This case is nothing more than a reassertion and reapplication of the statutory powers of the police with regard to arrest without warrant.

The plaintiffs in this case claim damages against the defendants for wrongful arrest and detention. The first and second plaintiffs are respectively the attendant and driver of motor-lorry C. 8200 belonging to Temerloh Timber Trading Co. Ltd., 5th milestone, Karak Road. Mentakab. I will for the sake of convenience refer to them as the attendant and driver respectively. The first and second defendants are respectively the Area Inspector, Mentakab, and the O.C.P.D., Police District, Temerloh. I will refer to them as the inspector and O.C.P.D. respectively. It is common ground that the third defendant is their employer.